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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 BOBBY SHAWN JANOE,

12 Petitioner,

13 vs.

14 JAMES TILTON,

15 Respondent.

CASE NO. 08-CV-420 JLS (POR)

**ORDER: DENYING
PETITIONER'S APPLICATION
FOR A CERTIFICATE OF
APPEALABILITY**

(Doc. No. 19.)

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17 Bobby Shawn Janoe filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.
18 On December 9, 2008, pursuant to 28 U.S.C. § 636(b)(1), Magistrate Judge Louisa S. Porter issued
19 a Report and Recommendation ("R&R") that the Court deny the petition. (Doc. No. 15.) Petitioner
20 did not file objections. Therefore, on February 2, 2009, the Court satisfied itself that there was no
21 clear error on the face of the record, and adopted Magistrate Judge Porter's R&R. (Doc. No. 16.) On
22 February 19, 2009, Petitioner filed a notice of appeal (Doc. No. 18) and a motion for certificate of
23 appealability. (Doc. No. 19.)


24 A certificate of appealability is authorized "if the applicant has made a substantial showing of
25 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2008). "A petitioner satisfies this
26 standard by demonstrating that jurists of reason could disagree with the district court's resolution of
27 his constitutional claims or that jurists could conclude the issues presented are adequate to deserve
28 encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); see also Slack

1 v. McDaniel, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of appealability
 2 indicating which issues satisfy the required showing or (2) state why a certificate should not issue.
 3 Fed. R. App. P. 22(b).

4 In this case, the pertinent legal question is whether the Court should have adopted Magistrate
 5 Judge Porter's R&R. Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1)
 6 set forth the duties of a district court in connection with a magistrate judge's report and
 7 recommendation. Since Petitioner did not object to the R&R,¹ the Rule states that the Court need
 8 "only satisfy itself that there is no clear error on the face of the record." Fed. R. Civ. P. 72, Advisory
 9 Committee Notes (1983) (citing Campbell v. U.S. Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974)).
 10 Here, the certificate should not issue because reasonable jurists would agree that Magistrate Judge
 11 Porter's R&R did not contain clear error. Therefore, reasonable jurists would agree that the Court was
 12 correct in adopting that R&R, denying the petition, and denying the request for an evidentiary hearing.
 13 Accordingly, the Court **DENIES** Petitioner's requests for a certificate of appealability.

14 IT IS SO ORDERED.

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 16 DATED: February 24, 2009


 17 Honorable Janis L. Sammartino
 18 United States District Judge
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 27 ¹ Petitioner argues that the certificate of appealability should issue because he "never received
 28 a copy of the Report and Recommendation," and therefore "cannot argue any objections to the Report
 and Recommendation in this brief." (Memo. ISO Motion, at 3.) Even assuming that Petitioner
 actually did not receive a copy of the R&R, reasonable jurists would agree that it was proper for the
 Court to adopt the R&R.